IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 187 of 1993

For Approval and Signature:

THE HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Petitioner(s)

Versus

NACHMO MARKETING PVT. LTD. - Respondent(s)

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Appearance :
MRS.M.M.BHATT for Petitioner No(s).: 1.
None for Respondent No(s).: 1.

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CORAM :THE HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 21/06/2005

ORAL JUDGMENT

(Per : HON'BLE MS.JUSTICE H.N.DEVANI)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'C' has referred the follow

ing question of law under Section 256(1) of the Income Tax Act,1961 (the Act) for determination by this Court at the instance of the Commissioner of Income Tax, Gujarat-I, Ahmedabad.

> "1. Whether the Appellate Tribunal is right in law and on facts in directing the Income-tax Officer to allow depreciation at the rate of 30% on diesel generating set?
>
> 2. Whether, the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.39,441-31 in respect of unpaid sales tax liability invoking the provisions of sec.43B of the Income-tax Act ?"

Mrs.M.M.Bhatt, learned Standing Counsel appears on behalf of the Revenue. Though served none appears on behalf of the respondent.

2 Mrs.M.M.Bhatt has fairly stated that the issue regarding rate of depreciation on diesel generating set stands concluded in favour of the revenue by a decision of this Court in the case of Commissioner of Income-tax Vs. Anang Polyfil Pvt.Ltd. (2004) 267 ITR 266 and the issue regarding invocation of the provisions of Sec. 43B in respect of unpaid Sales-tax liability stands concluded against the revenue by a decision of the Supreme Court in the case of *Allied Motors (P) Ltd. Vs. Commissioner of Income-tax (1997) 224 ITR 677.*

3 Applying the ratio of the aforesaid decisions to the facts of the present case question No.1 is answered in the Negative i.e. , in favour of the revenue and against the assessee and question No.2 is answered in the affirmative i.e., in favour of the asessee and against the revenue.

4 The reference stands disposed of accordingly, with no order as to costs.

(D.A.MEHTA,J)

(H.N.DEVANI,J)

m.m.bhatt